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S E C R E T SECTION 01 OF 02 BAGHDAD 003932

SIPDIS

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SUBJECT: APPROACHING THE 18-MONTH THRESHOLD FOR DETAINEES  
IN IRAQ

REF: NEA/I PM CLASSIFIED O-I FOR 09/16/05

Classified By: DEPUTY CHIEF OF MISSION DAVID M. SATTERFIELD FOR REASONS  
1.4 (b), (c), AND (d).

1. (C) SUMMARY. The internment of certain individuals involved with insurgent and terrorist operations in Iraq will begin to exceed 18 months at the start of 2006. Coalition Provisional Authority (CPA) Memorandum No. 3 established an 18-month threshold for holding detainees, after which a detainee held for security reasons must be released, transferred to the GOI for prosecution, or referred to the Joint Detention Committee for approval to intern the individual for longer than 18 months. Post and Task Force-134 (TF-134) have been discussing the 18-month limit to develop a firm plan that will not negatively affect security conditions in Iraq. END SUMMARY.

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LEGAL BASIS  
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2. (S) Section 6 of CPA Memorandum No. 3 (Revised) states that individuals detained for security reasons after 6/30/04 may be detained for a maximum of 18 months; after that they must be released, transferred to the GOI for prosecution, or referred to a Joint Detention Committee (JDC). The JDC co-chairs must jointly concur within two months of the end of the 18-month term whether to continue detainment or release the individual. The Coalition and the GOI adhere to Memorandum No. 3 by conducting Combined Review and Release Boards (CRRBs). Each detainee is reviewed by a CRRB every 90-180 days, and approximately 40 percent of detainee cases brought before the Board are recommended for release.

3. (SBU) CPA Order No. 99 outlines the structure of the JDC. The co-chairs are to be the Iraqi Prime Minister (PM) and the MNF-I Commanding General. Other prominent members are the Ambassadors from the U.S. and the U.K. Further representation is required from the Iraqi ministries and MNF-I.

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NUMBERS  
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4. (SBU) The earliest date that any action would have to be taken for security detainees is December 28, 2005, by which time the JDC would need to have met to receive applications to continue holding individuals beyond 18 months.

5. (S) TF-134 tracks the number of security detainees and when each will reach the 18-month threshold. The number of detainees who will reach the threshold during the first seven months of 2006 are as follows:

-January (146)  
-February (182)  
-March (233)  
-April (388)  
-May (643)  
-June (651)  
-July (958)

MNF-I is preparing cases on a number of these detainees for the Central Criminal Court of Iraq (CCCI). (NOTE: The higher number of detainees reaching the threshold in July 2007 is due to the large number of internments in the run-up to the January 2005 elections, 18 months prior. END NOTE.)

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DEVELOPING A PLAN  
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6. (S) Post and TF-134 have been working to find a suitable Iraqi interlocutor for detention issues. This interlocutor needs sufficient authority within the Iraqi Transitional Government (ITG) to deal with a broad range of detention issues, including transfer of detention operations, release of High-Value Detainees (HVDs), increased cooperation in finding evidence of criminal wrongdoing by those currently held, and the 18-month term limit. The PM's initial appointee was Sharwan al-Waely. Efforts to form a constructive relationship with al-Waely proved unsatisfactory.

17. (S) In July 2005, Post and the PM agreed to form the Iraq-U.S. Detainee Working Group (DWG). The PM named Dr. Safa al-Safi, Minister of State for Transitional National Assembly (TNA) Affairs, as the Iraqi Co-Chair of the DWG. TF-134 Commanding General and the Embassy Legal Advisor are the U.S. Co-Chairs for the DWG. Post considers the DWG the entity that will serve as the operational and administrative arm of the JDC if approval to hold security detainees beyond 18 months becomes necessary. The DWG will coordinate the applications bilaterally prior to their presentation to the JDC for action. This coordination will be part of a broad effort to fully engage the ITG on the issue of transferring detention operations.

18. (S) Steps also are underway to attempt to reduce the detainee population approaching the 18-month threshold. TF-134 is engaging the Iraqi Ministry of the Interior (MOI) in an effort to find additional evidence that would allow criminal prosecution of more security internees. This effort prioritizes detainees who have been held the longest. TF-134 also reviews every detainee's file to determine whether there is sufficient admissible evidence to successfully prosecute the detainee at the CCCI. Cases that are 15 months or older receive priority. Upon conviction, detainees are transferred to Iraqi custody. Further, Post and MNF-I are pushing to release significant numbers of security internees as part of an outreach effort. This release effort is complicated, however, because previous CRRBs and improved detainee screening by MNF-I operational components have resulted in a relatively homogeneous, high-risk detainee population.

19. (U) Finally, Post and TF-134 continue to engage the ITG on the issue of transferring detention operations and building a broader rule of law capacity. These efforts will address investigative and court capacity (to bring before the courts more cases of those being held as security internees), prison capacity (to transfer those who are convicted to Iraqi physical custody), and capacity to take over MNF-I detention facilities once Iraq is in a position to assume responsibility for security detentions.  
Khalilzad